

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Edwin Valentin)	File No. EB-00-DT-024
d/b/a Musical Radio)	NAL Acct. No. 815DT0002
Pontiac, Michigan)	

MEMORANDUM OPINION AND ORDER

Adopted: March 6, 2000

Released: March 9, 2000

By the Commission:

1. In this order, we affirm a \$5,000 forfeiture assessed against Edwin Valentin by the former Compliance and Information Bureau for operating an unlicensed FM radio station on frequency 106.3 MHz in Pontiac, Michigan, in contravention of Section 301 of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 301, and Sections 15.209 and 15.239 of the Commission’s Rules (“Rules”), 47 C.F.R. §§ 15.209 and 15.239.¹

2. In 1997, the Commission’s Detroit Field Office investigated complaints that an unlicensed FM radio station was broadcasting on 106.3 MHz in the Detroit, Michigan area, and eventually determined that Rev. Edwin Valentin was operating the unlicensed radio station. On December 10, 1997, the Detroit Field Office issued a \$5,000 Notice of Apparent Liability (“NAL”) to Rev. Valentin for operating an FM radio station in contravention of Section 301 of the Act and Sections 15.209 and 15.239 of the Rules. Although Rev. Valentin responded to the NAL, he did not challenge the allegations that the Detroit Field Office raised against him. He took issue, instead, with the Commission’s refusal to license micro broadcasters, even though he had not applied for a license, and argued that the Commission’s position on this issue serves as an impermissible infringement and restriction of his First Amendment right to broadcast.

3. On March 11, 1998, the Bureau reviewed the NAL, considered Rev. Valentin’s response, and concluded that the record supported the NAL. The Bureau then issued a \$5,000 Notice of Forfeiture (“NOF”) to Rev. Valentin. The Bureau rejected Rev. Valentin’s challenge to the constitutionality of the Commission’s licensing scheme, concluding that the licensing scheme is constitutional and finding that Rev. Valentin had not, in any event, even applied for a license or any other form of necessary authorization.²

4. In his Application for Review, Rev. Valentin raises the same two arguments that he raised in his response to the NAL. We find that the Bureau fully and correctly addressed Rev. Valentin’s

¹ *Edwin Valentin d/b/a Musical Radio*, 13 FCC Rcd 5099 (Compl. & Inf. Bur. 1998).

² In his response to the NAL and in his Application for Review, Rev. Valentin states, in passing, that he requests a waiver of Section 301 of the Act. Although Rev. Valentin is free to file an application along with a request for a waiver of the power limits for low power broadcasts contained in Part 15 of the Rules, *Hippolito Cuevas*, 13 FCC Rcd 25289 (Mass Med. Bur. 1998), a forfeiture proceeding is not the appropriate place to consider such a request. In any event, it is undisputed that Rev. Valentin had not received a waiver and a license at the time of the unlawful operation.

contentions in the NOF. The Commission's licensing scheme is constitutional. *See, e.g., NBC v. United States*, 319 U.S. 190 (1943); *Free Speech v. Reno*, 1999 WL 982951 (2nd Cir. Oct. 29, 1999) (*per curiam*), *rehearing pending*; *Stephen Paul Dunifer*, 11 FCC Rcd 718, 720-27 (1995). Rev. Valentin has not filed for (let alone received) a Commission license. He intentionally broke the law. Therefore, we deny Rev. Valentin's Application for Review and affirm the Bureau's NOF.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and Sections 1.80 and 1.115(g) of the Commission's Rules, 47 C.F.R. §§ 1.80 and 1.115(g), Rev. Valentin's Application for Review **IS DENIED**.

6. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by certified mail, return receipt requested, to Rev. Valentin and counsel.

Payment may be made by credit card through the Commission's Credit and Debt Management Center, (202) 418-1995, or by mailing a check or similar instrument payable to the order of the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should be marked "NAL Acct. No. 815DT0002." Forfeiture penalties not paid within 30 days may be referred to the Department of Justice for recovery. *See* 47 U.S.C. § 504(a).

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary